

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

BROOKE LAYTON and ASHLYNN	§	
SHIPLEY,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 3:21-cv-01636-N
	§	
MAINSTAGE MANAGEMENT, INC.,	§	COLLECTIVE ACTION
NICK’S MAINSTAGE, INC. – DALLAS	§	
PT’S d/b/a PT’S MEN’S CLUB and	§	JURY DEMANDED
NICK MEHMETI,	§	
<i>Defendants.</i>	§	
	§	

**PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT ON EMPLOYEE  
STATUS AND MOTION FOR SUMMARY JUDGMENT ON DEFENDANTS’  
COUNTERCLAIMS AND AFFIRMATIVE DEFENSES**

Plaintiffs Brooke Layton and Ashlynn Shipley (collectively, “Plaintiffs”) file this Motion for Partial Summary Judgment on Employee Status and Motion for Summary Judgment on Defendants’ Counterclaims and Affirmative Defenses (the “Motion”). In support thereof, Plaintiffs respectfully show this Court as follows:

**SUMMARY**

1. Plaintiffs move for partial summary judgment on their FLSA claims on the issue of their employee status under the FLSA—against Defendants Mainstage Management, Inc. (“Mainstage”), Nick’s Mainstage, Inc. – Dallas PT’s d/b/a PT’s Men’s Club (“PT’s” or the “Club”) and Nick Mehmeti’s (“Mehmeti”) (collectively “Defendants”). Plaintiffs further move for summary judgment on Defendants’ counterclaims for breach of contract, unjust enrichment, and attorneys’ fees. Additionally, Plaintiffs move for summary judgment as to Defendants’ affirmative defenses of waiver/equitable estoppel/consent/ratification (third affirmative defense), failure of

condition precedent (fifth and tenth affirmative defenses), failure to mitigate (sixth affirmative defense), unclean hands (seventh affirmative defense), offset/unjust enrichment (eight affirmative defense), estoppel (ninth affirmative defense), *pari delicto* (eleventh affirmative defense) and lack of standing/jurisdiction and failure to state a claim (twelfth affirmative defense).

2. Plaintiffs have already shown the Court there is no genuine dispute of material fact as to their employee status and such issue should be determined as a matter of law by the Court and incorporate such arguments herein. *See* Plaintiffs' Response and Brief in Opposition to Defendants' Motion for Summary Judgment (the "Response") [Dkts. 80.1-80.3; under seal 81.1]. Likewise, Plaintiffs have also already shown the Court that Defendants' counterclaim for breach of contract for (1) failure to keep records; (2) filing a collective action FLSA complaint; and (3) filing a FLSA lawsuit are improper in the face of a FLSA claim and should be dismissed, or alternatively, Defendants can establish no right to damages flowing from the alleged breaches. *Id.* Plaintiffs include herein additional argument, legal support, and/or evidence to show there are no genuine issues of material fact as to Defendants' counterclaims for unjust enrichment or attorneys' fees, as well as the enumerated affirmative defenses.

3. Plaintiffs' Motion should be in all things granted.

#### **CLAIMS TO BE DECIDED**

4. Each of the matters required by Local Rule 56.3(a) are set forth in Plaintiffs' Brief in Support of their Motion for Summary Judgment (Brief), filed contemporaneously with this Motion and incorporated herein as if set forth in full.

5. In support of the Motion, Plaintiffs rely upon the evidence contained in Plaintiffs' Appendix, and documents attached thereto, as well as any documents or pleadings referenced in Plaintiffs' Brief that were previously filed with the Court.

**PRAYER FOR RELIEF**

WHEREFORE PREMISES CONSIDERED, Plaintiffs Brooke Layton and Ashlyn Shipley respectfully request the Court grant Plaintiffs' Motion for Partial Summary Judgment on Plaintiffs' Employee Status and Motion for Summary Judgment on Defendants' Counterclaim and Affirmative Defenses, and further, grant Plaintiffs any and all further relief to which they may be entitled.

Respectfully submitted,

**ELLZEY & ASSOCIATES, PLLC**

/s/ Leigh S. Montgomery

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I certify that on March 17, 2023 a true and correct copy of the foregoing instrument was electronically served on all counsel of record who have appeared and consented to electronic notification *via* CM/ECF, in accordance with the CM/ECF protocols of in the United States District Court for the Northern District of Texas and the Federal Rules of Civil Procedure.

/s/ Leigh S. Montgomery  
Leigh S. Montgomery